

MARAD's collateral interests. The Secretary's determination shall be based on confidential risk assessments provided by the Export-Import Bank of the United States and country risk analyses provided by the Inter-Agency Country Risk Assessment System and shall take into account any other factors related to the loan guarantee transaction deemed pertinent by the Secretary.

Subpart C—Guarantees

§ 298.20 Term, redemptions and interest rate.

(a) *In general.* To be eligible for Guarantees, Obligations shall have a maturity date satisfactory to the Secretary, not exceeding the anticipated physical and economic life of the Vessel or Vessels or Advanced or Modern Shipbuilding Technology. Such maturity date may be less than but in no event more than:

(1) Twenty-five years from the date of delivery from the shipbuilder of a single new Vessel which is to be security for Guarantees;

(2) Twenty-five years from the date of delivery from the shipyard of the last of multiple Vessels which are to be security for the Guarantees;

(3) The later of twenty-five years from the date of original delivery of a reconstructed or reconditioned Vessel which is to be security for the Guarantees, or at the expiration of the remaining useful life of the Vessel, as determined by the Secretary; and

(4) The technological life of the Advanced or Modern Shipbuilding Technology.

(b) *Required redemptions.* Where multiple Vessels or multiple Advanced Shipbuilding Technology or Modern Shipbuilding Technology assets are to be used as security for the Guarantees, as set forth in paragraph (a) of this section, the Secretary may require payments of principal prior to maturity (redemptions) with respect to all related Obligations, as may be deemed necessary to maintain adequate security for the Guarantees.

(c) *Interest rate.* The interest rate of each Obligation must be determined by the Secretary to be reasonable, taking into account the range of interest rates

prevailing in the private market for similar loans and the risks assumed by the Secretary.

§ 298.21 Limits.

(a) *Actual Cost basis.* The amount of Obligations to be issued shall be satisfactory to the Secretary based upon the economic soundness of the transaction. Such amount may be less than but in no event more than 75 percent or 87½ percent, whichever is applicable under the provisions of section 1104A(b)(2) or section 1104B(b)(2) of the Act, of the Actual Cost of the Vessel or Vessels or Advanced Shipbuilding Technology or Modern Shipbuilding Technology asset(s). If minimum horsepower of the main engine is a requirement for Guarantees up to 87½ percent of the Actual Cost, the standard with respect to such horsepower shall be continuous rated horsepower. Where existing debt is being refinanced, pursuant to section 1103A(a)(5) of the Act, the amount of new Obligations issued in respect to such existing debt may not exceed the lesser of:

(1) The amount of outstanding debt being refinanced (whether or not receiving assistance under Title XI); or

(2) Seventy-five or 87½ percent whichever is applicable, of the Depreciated Actual Cost of the Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology with respect to which the new Obligations are being issued.

(b) *Actual Cost items.* Actual Cost is comprised essentially of those items which would customarily be capitalized as Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology construction costs such as designing, engineering, constructing (including performance bond premiums approved by the Secretary), inspecting, outfitting and equipping. There shall be included those cost items usually specified in Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology construction contracts, e.g., changes and extras, cost of owner furnished equipment, shoreside spare parts and commitment fees and interest on the Obligations or other borrowings during the construction period (excluding interest paid on subordinated debt considered to be Equity,

and incurred during the construction period), and less income realized from investment of Escrow Fund deposits during the construction period. Recognizing the importance that the payment of commissions plays in the export market, commissions (which represent a portion of the total shipyard contract price) may be included in the foreign equipment and services amount of the Actual Cost of an export project, provided:

A majority of the work done by the parties receiving the commissions is in the form of design and engineering work, and

The commissions represent a small amount of the total contract price. In addition, Guarantee Fees determined in accordance with the provisions of section 1104(e) of the Act shall be included in the items of Actual Cost. In approving Actual Cost the Secretary will consider all pertinent factors.

(c) *Items excludible from Actual Cost.* Actual Cost shall not include any other costs such as the following:

- (1) Legal fees or expenses;
- (2) Accounting fees or expenses;
- (3) Commitment fees or interest other than those specifically allowed;
- (4) Fees, commissions or charges for granting or arranging for financing;
- (5) Fees or charges for preparing, printing and filing an application for Title XI Guarantees and supporting documents, for services rendered to obtain approval of the application and for preparing, printing and processing documents relating to the application for Guarantees;
- (6) Underwriting or trustee's fees;
- (7) Federal documentary tax stamps;
- (8) Investigation Fee determined in accordance with section 1104(f) of the Act and § 298.15 of this part;
- (9) Predelivery Vessel operating expenses, Vessel insurance premiums and other items which may not be properly capitalized by the owner as costs of the Vessel under generally accepted accounting principles;
- (10) The cost of the condition survey required by § 298.11(d) of this part and all work necessary to meet the standards set forth therein;
- (11) The cost to the Shipowner of a Vessel which is to be reconstructed or

reconditioned, e.g., cost of acquisition or repair work;

(12) Generally not include any amount payable to the shipyard for early delivery of the Vessel;

(13) Generally not include any amount payable to the manufacturer of the Advanced Shipbuilding Technology or Modern Shipbuilding Technology for early delivery of the equipment to the General Shipyard Facility;

(14) Predelivery Advanced Shipbuilding Technology or Modern Shipbuilding Technology expenses which may not be properly capitalized by the General Shipyard Facility as costs of the technology under Generally Accepted Accounting Principles; and

(15) The cost of major foreign components and other foreign components for which there is no waiver and their assembly when comprising any part of the hull and superstructure of a Vessel.

(d) *Substantiation of Actual Cost.* Prior to payment from the Escrow Fund or Construction Fund (described in §§ 298.33 and 298.34 of this part), and prior to the final Actual Cost determination for each Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology, the applicant shall submit to the Secretary documents substantiating all claimed costs eligible under § 298.21(b) or, alternatively, appropriate certification of such costs by an agent approved by the Secretary. These documents may include but need not be limited to copies of invoices, change orders, subcontracts, and where required by the Secretary, statements from independent certified or independent licensed public accountants that the costs for which payment or reimbursement is sought were actually paid or are payable with respect to the construction of a Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology. These documents must be summarized, indexed and arranged according to cost categories, pursuant to directions contained in forms prescribed by the Secretary.

(e) *Escalation as part of Actual Cost.* Escalation clauses in construction contracts shall be subject to approval by the Secretary. After a review of the base contract price and the escalation clauses, the Secretary shall, in order to

estimate the Actual Cost amount to be stated in the Letter Commitment, add to the approved base contract price the amount of estimated escalation as approved by the Secretary. The Secretary must subsequently approve the amount of escalation claimed by the applicant as Actual Cost.

(f) *Moneys received in respect of construction.* If the Obligor or any Person acting in behalf of the Obligor shall from time to time receive moneys due in respect to construction of a Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology (described in the Security Agreement) from the shipbuilder, guarantors, sureties or other Persons, the Obligor shall give written notice of such fact to the Secretary. So long as the Guarantees have not been paid by the Secretary, the Obligor or other recipient shall promptly make deposit of these moneys in a Depository with a written notice that the Depository shall hold such moneys on deposit until it receives written instructions from the Secretary as to their disposition. The Secretary shall determine the extent to which Actual Cost is to be reduced with respect to these moneys. In no event shall Actual Cost be reduced with respect to payments by the shipyard to a Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology owner of liquidated damages for late delivery of the Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology. If the Secretary shall have paid the Guarantees, the Obligor or other recipient shall promptly pay these moneys including any liquidated damages to the Secretary for deposit into the Federal Ship Financing Fund.

(g) *Depreciated Actual Cost.* After a Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology has been delivered or redelivered (in the case of reconstruction or reconditioning), the limitation on the amount of Guarantees shall be 75 or 87½ percent, whichever is applicable, of the Depreciated Actual Cost of the Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology.

§ 298.22 Amortization of Obligations.

Generally after Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology delivery, and until maturity of the Obligations, the Obligor shall be required by provision of the Trust Indenture or other part of the Documentation to make periodic payment of interest on and principal of the Obligations. Usually, the payment of principal (amortization) shall be made semi-annually, but in no event, less frequently than on an annual basis, and in either case shall be in equal parts (straightline basis), unless the Secretary consents to the periodic payment of a constant aggregate amount, comprised of both interest and principal components which are variable in amount (level debt basis). No other proposed method of amortization will be allowed which would reduce the amount of periodic amortization below that determined under the straightline or level debt basis at any time prior to maturity of the Obligations, except where:

(a) The Obligor can demonstrate to the satisfaction of the Secretary that there will be adequate funds to discharge the Obligations at maturity;

(b) The Obligor establishes a fund acceptable to the Secretary in which the Obligor deposits an equal annual amount necessary to redeem the outstanding Obligations at maturity; or

(c) With regard to Eligible Export Vessels, in accordance with such other terms as the Secretary determines to be more favorable and to be compatible with export credit terms offered by foreign governments for the sale of vessels built in foreign shipyards.

§ 298.23 Refinancing.

The Secretary may approve guarantees with respect to Obligations to be secured by one or more Vessels or Advanced or Modern Shipbuilding Technology and issued to refinance existing debt, whether or not covered by mortgage insurance or Guarantees, so long as the existing debt has been issued for one of the purposes set forth in Sections 1104(a) (1) through (4) of the Act. Section 1104(a)(1) of the Act requires that, if the existing indebtedness was incurred more than one year after the delivery or redelivery of the related